UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TEXAS

ENTROPIC COMMUNICATIONS, LLC)
Plaintiff,)
v.) Civil Action No. 2:22-cv-00125-JRG
CHARTER COMMUNICATIONS, INC.	
Defendant.)))

CHARTER'S MOTION TO EXCLUDE THE EXPERT OPINIONS OF STEPHEN DELL

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GLOSSARY

Term	Description
CCAP	Converged Cable Access Platform
CM	Cable Modem
CMTS	Cable Modem Termination System
СРЕ	Customer Premise Equipment
FBC	Full Band Capture
Gigabit	Gigabits per second
Mbps or Mbit	Megabits per second
MoCA	Multimedia over Coaxial Alliance
PMA	Profile Management Application
PNM	Proactive Network Monitoring
STB	Set-Top Box
'775 patent	Asserted U.S. Patent No. 8,223,775
'008 patent	Asserted U.S. Patent No. 8,792,008
'826 patent	Asserted U.S. Patent No. 9,825,826
'362 patent	Asserted U.S. Patent No. 9,210,362
'682 patent	Asserted U.S. Patent No. 10,135,682
'690 patent	Asserted U.S. Patent No. 8,284,690

Defendant Charter Communications, Inc. ("Charter") respectfully submits this opening brief in support of its motion to exclude the damages opinions of Stephen Dell submitted on behalf of Plaintiff Entropic Communications, LLC ("Entropic").

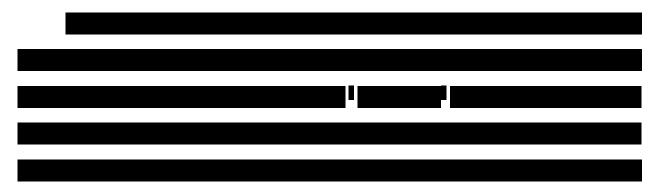
I. INTRODUCTION

Entropic's damages expert, Stephen Dell, opines that Entropic is owed no less than

In arriving at this vastly inflated damages amount, Dell (i) fails to apportion for the incremental value of the asserted patents, (ii) improperly calculates damages for method claims, (iii) improperly calculates future damages by applying his running royalty through patent expiration based on unrealistic and speculative projections, (iv) opines on a "benefit share" akin to a profit split based on the property makes credibility determinations of Charter's witnesses. Dell's reasonable royalty opinions are fundamentally flawed and unreliable, and should be excluded in their entirety.

II. FACTUAL BACKGROUND

A. The Asserted Patents And Accused Products/Services

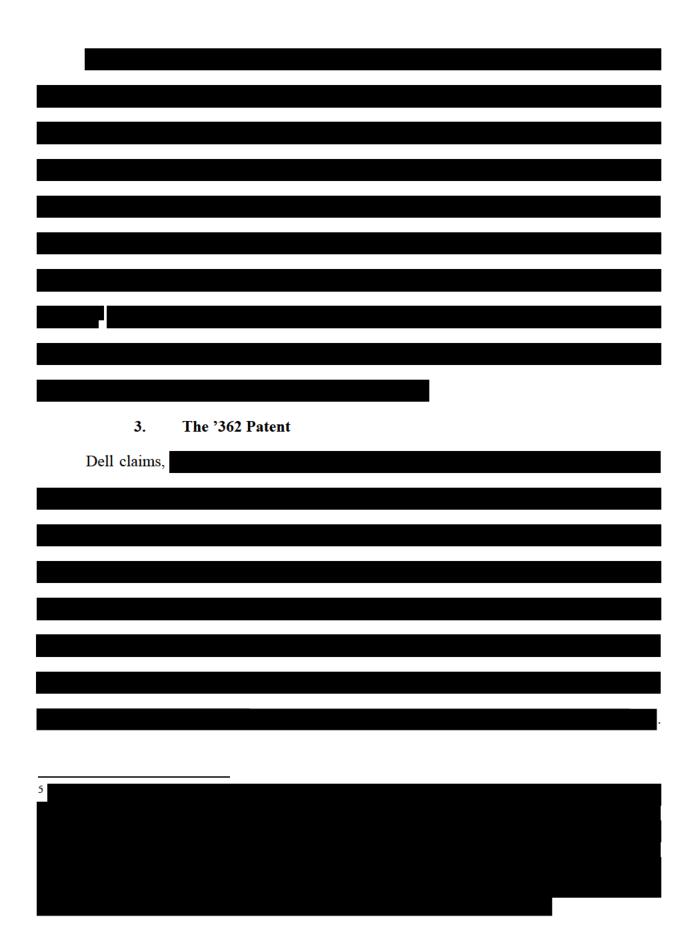


¹ "Ex." refers to Exhibits to the Declaration of Elizabeth Long In Support Of Charter's Motion To Exclude The Expert Opinions Of Stephen Dell, filed herewith.

² The Asserted Patents are the '775 patent, the '008 patent, the '826 patent, the '362 patent, the '682 patent, and the '690 patent.

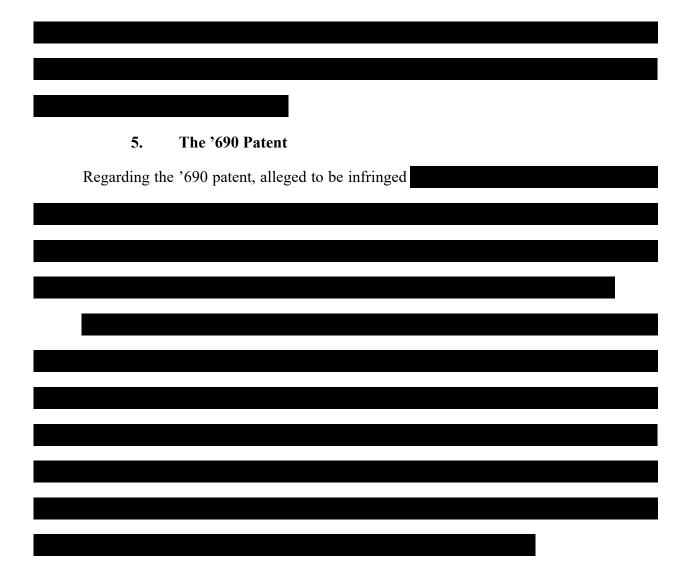
B. The Dell Reports
On July 21, 2023, Dell served an expert report opining that Entropic is entitled to damages
On July 21, 2023, Belt served an expert report opining that Endopie is entitled to damages
Below is a description of each of Dell's damages theories for the asserted patents.
1. The '775 Patent

2. The '008/'826 Patents
Dell's report asserts that the claimed technology in the '008/'826 patents
Dell then purports to
Dell then purports to



Theory 1 [Subset of '008/'826] a. For this theory, Dell uses the same methodology for the '008/'826 patents described above, but instead of Theory 2 b. Dell claims that Theory 3 c. As support for the claim that

4.	The '682 Patent
According to	
3	
To calculate	his reasonable royalty,



III. LEGAL STANDARDS

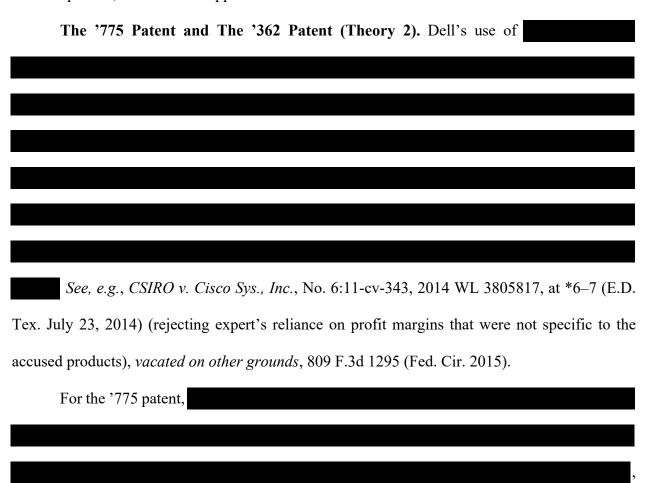
An expert witness may provide opinion testimony only if "(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case." Fed. R. Evid. 702. Rule 702 requires the district court to act as a gatekeeper to "ensure that any and all scientific testimony or evidence admitted is not only relevant but reliable." *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592 (1993). This "basic gatekeeping obligation" applies to all expert testimony, including damages

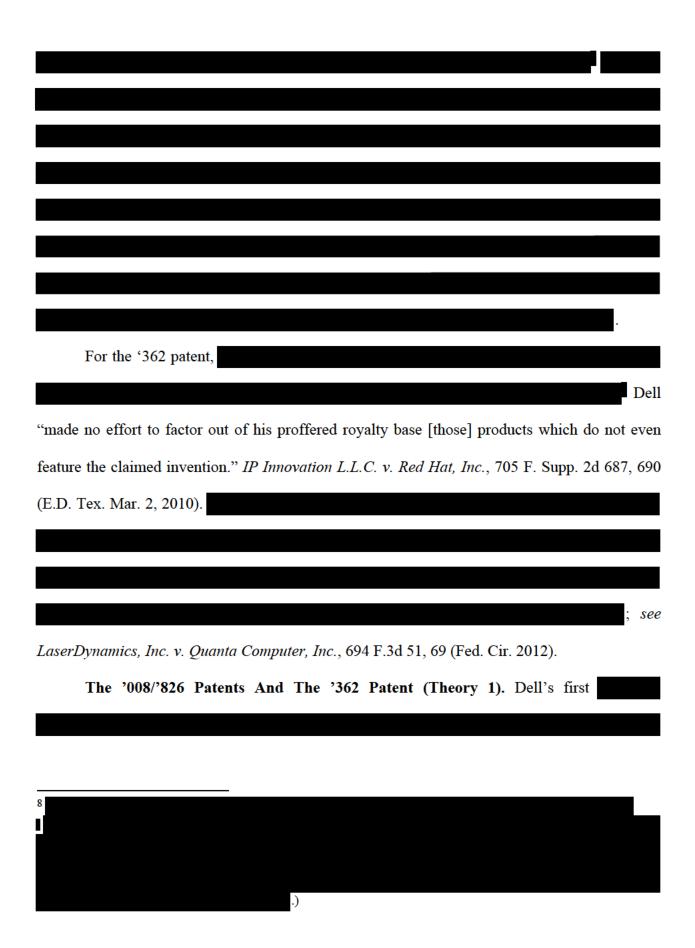
experts. Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147 (1999); VirnetX, Inc. v. Cisco Sys., Inc., 767 F.3d 1308, 1328 (Fed. Cir. 2014).

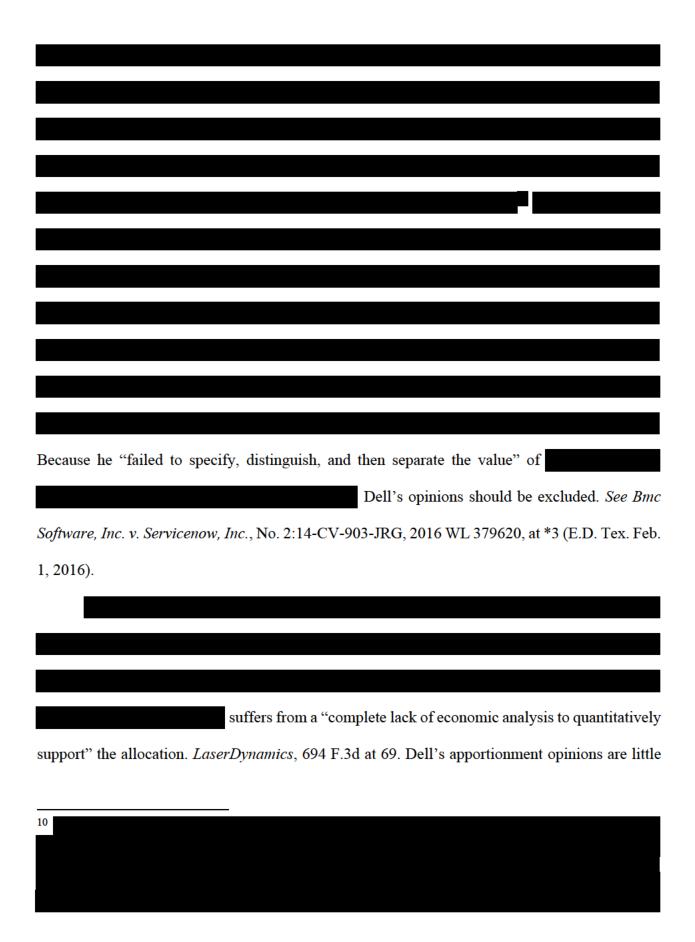
IV. ARGUMENT

A. Dell Failed To Apportion

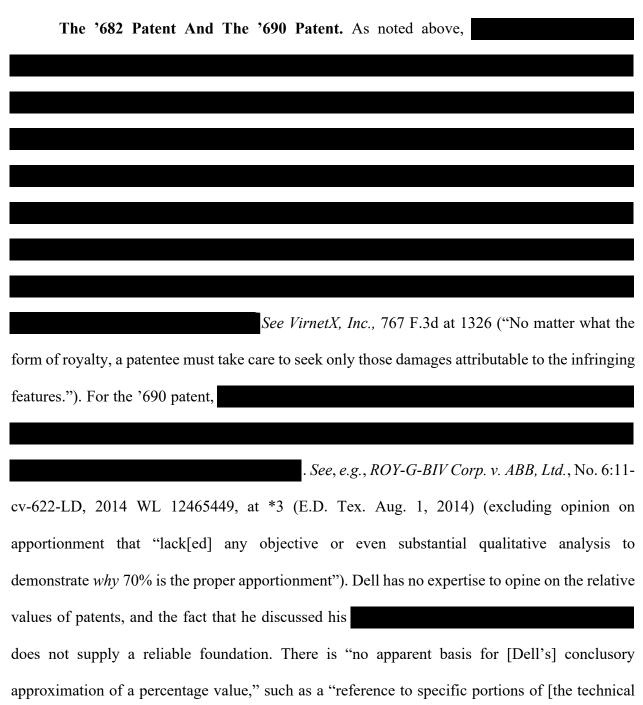
The Federal Circuit has "repeatedly held, the essential requirement for reliability under *Daubert* is that the ultimate reasonable royalty award must be based on the incremental value that the patented invention adds to the end product. In short, apportionment." *CSIRO v. Cisco Sys.*, *Inc.*, 809 F.3d 1295, 1301 (Fed. Cir. 2015) (cleaned up). As established below, for each of the asserted patents, Dell failed to apportion to isolate the incremental value of the claimed invention.





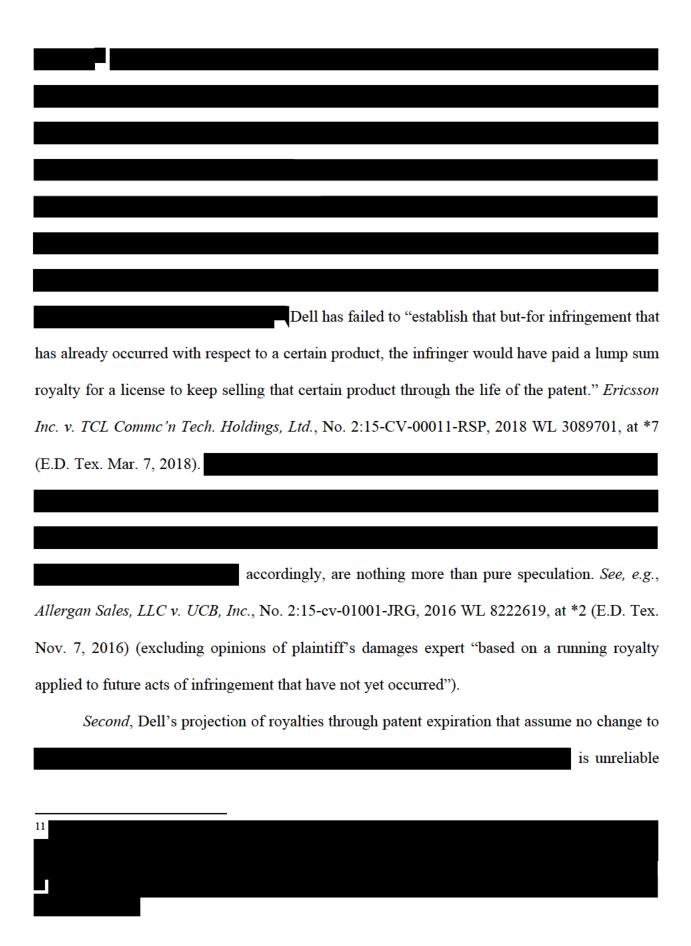


more than *ipse dixit*, and should be excluded. *See, e.g., Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 137 (1997) ("[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.").



expert's technical opinion." See Opticurrent, LLV v. Power Integrations, Inc., 2018 WL 6727826,

at *12 (N.D. Cal. Dec. 21, 2018). The '362 Patent (Theory 3). As noted above, , does not rest "on a reliable foundation," and should be excluded. See Daubert, 509 U.S. at 597–98. В. Dell's Lump Sum Royalties Based On Infringement Of Method Claims Are Unreliable, Speculative, And Should Be Excluded Each of the asserted claims for the '682 and '690 patents are method claims, and Entropic claims that) Dell's calculation of a lump sum reasonable royalty for both patents is unreliable and speculative because First, as Dell admits,



because it ignores the dynamic nature of the cable industry. Dell cites no treatises, textbooks, or journals that support an assumption of entirely static economic outcomes (including inflation and interest rates) over the next decade. By assuming no changes to in this constantly-evolving industry, Dell's royalties for future infringement are not based on "sound economic and factual predicates" and should be excluded. *LaserDynamics*, 694 F.3d at 67.

C. Dell's Other "Lump Sum" Royalty Opinions Are Unreliable, Speculative, And Should Be Excluded

In addition to the unreliable opinions on future infringement for the '682 and '690 patents,

Dell also provides unreliable opinions that he characterizes as a

Dell's static future projections

are far from the type of "realistic" projections that may be presented. See, e.g., Ericsson, 2018 WL

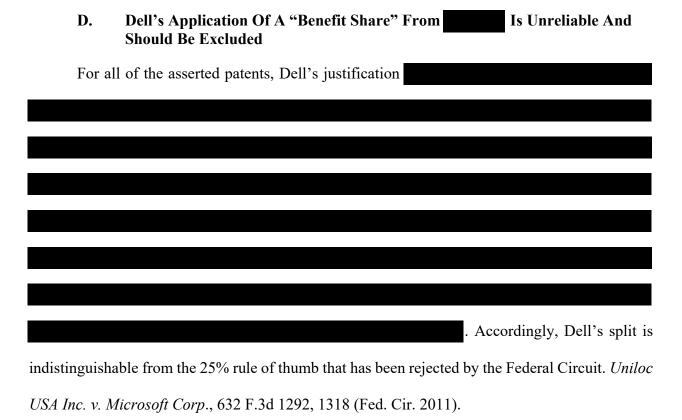
3089701, at *7; see also Finjan, Inc. v. Sophos, Inc., No. 14-CV-01197-WHO, 2016 WL 4268659,

at *5 (N.D. Cal. Aug. 15, 2016) ("Layne-Farrar's estimate of steady sales through the end of 2025

and 2032, based only on current growth, is too speculative to assist the jury in assessing a

reasonable future damage amount."). In short, Dell's opinions are "derived from unreliable data

and built on speculation," and should not be admitted. *Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, 711 F.3d 1348, 1374 (Fed. Cir. 2013).



E. Dell Should Be Precluded From Making Credibility Determinations

Dell, as damages expert, should be precluded from making credibility determinations regarding Charter's corporate representatives, particularly on technical matters for which he is entirely unqualified. (*See*, *e.g.*, Ex. B ¶¶ 54, 57, 66–67.) "Credibility determinations, of course, fall within the jury's province." *Skidmore v. Precision Printing & Pkg., Inc.*, 188 F.3d 606, 618 (5th Cir. 1999); *see also Oasis Rsch., LLC v. Adrive, LLC*, No. 4:10-CV-435, 2013 WL 12156381, at *2 (E.D. Tex. Mar. 1, 2013) (precluding expert from "testifying as to any witness's credibility").

V. CONCLUSION

For the foregoing reasons, Charter respectfully requests exclusion of Dell's opinions regarding a reasonable royalty.

Dated: September 11, 2023 Respectfully submitted,

/s/ Daniel Reisner by permission Elizabeth Long

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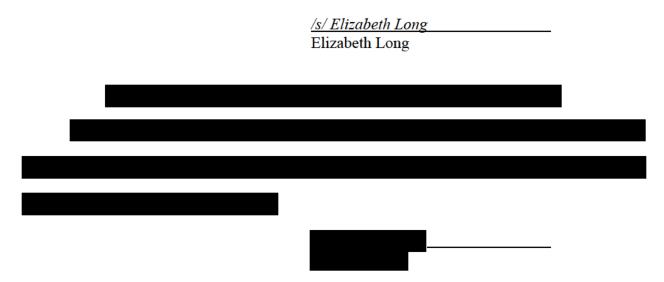
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document and all attachments thereto are being filed electronically in compliance with Local Rule CV-5(a). As such, this document is being served September 11, 2023, on all counsel of record, each of whom is deemed to have consented to electronic service. L.R. CV-5(a)(3)(A).



CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(h), the undersigned counsel hereby certifies that counsel for the parties met and conferred by telephone on September 1, 2023, and Plaintiff has stated that it opposes this motion.

/s/ Elizabeth Long
Elizabeth Long